

COMMONWEALTH OF MASSACHUSETTS

APPELLATE TAX BOARD

RICHARD & MARYLEA SULLIVAN, v.
TRUSTEES OF THE
SULLIVAN LIVING TRUST

BOARD OF ASSESSORS OF
THE TOWN OF EASTHAM

Docket No.: F328852

Promulgated:
June 26, 2017

This is an appeal filed under the formal procedure pursuant to G.L. c. 58A, § 7 and G.L. c. 59, §§ 64 and 65, from the refusal of the Board of Assessors of the Town of Eastham ("appellee" or "assessors"), to abate taxes on certain real estate located in Eastham, owned by and assessed to the appellants, Richard and Marylea Sullivan, Trustees of the Sullivan Living Trust, under G.L. c. 59, §§ 11 and 38, for fiscal year 2016.

Commissioner Rose ("Presiding Commissioner") heard this appeal and issued a single-member decision for the appellee in accordance with G.L. c. 58A, § 1 and 831 CMR 1.20. These findings of fact and report are made pursuant to a request by the appellants under G.L. c. 58A, § 13 and 831 CMR 1.32.

Richard Sullivan, pro se, for the appellants.

Belinda Eyestone, assessor, for the appellee.

FINDINGS OF FACT AND REPORT

On the basis of the testimony and exhibits offered into evidence at the hearing of this appeal, the Presiding Commissioner made the following findings of fact.

On January 1, 2015, the appellants were the assessed owners of a condominium located at 2211 State Highway in Eastham ("Subject"). For fiscal year 2016, the assessors valued the Subject at \$216,300 and assessed a tax thereon, at a rate of \$7.44 per \$1,000, in the amount of \$1657.55.¹ Eastham's Collector of Taxes mailed the fiscal year 2016 tax bill on September 9, 2015. In accordance with G.L. c. 59, § 57, the appellants paid the tax due without incurring interest and in accordance with G.L. c. 59, § 59, the appellants timely filed an application for abatement on October 28, 2015. The assessors denied the abatement application on November 4, 2015, and on December 14, 2015, the appellants seasonably filed an appeal with the Appellate Tax Board ("Board"). On the basis of these facts, the Presiding Commissioner found and ruled that the Board had jurisdiction to hear and decide this appeal.

According to the appellants, the Subject was a single-story, cottage-style condominium. It had two bathrooms, one

¹ This sum includes a \$48.28 Community Preservation Act surcharge.

garage and 960 square feet of living area. The appellants did not specify the number of bedrooms or provide a property record card for the Subject. The appellants argued that the Subject was overvalued for fiscal year 2016 and asserted that the assessors' evidence did not provide reliable indicators of the property's value.

The appellants' argument rested entirely on the sale price and 2016 assessed value of a cottage-style condominium located at 2195 State Highway in Eastham ("Property"). The Property was sold on December 11, 2014, for \$177,500.² The Property, which was a non-conforming assemblage of multiple condominium units, was substantially larger than the Subject and had one more bathroom as well as three garage spaces. Following the sale, the assessors reduced the Property's fiscal year 2015 assessed value of \$261,000 to \$172,000 for fiscal year 2016.

The appellants asserted that the Property's December 2014 sale price and 2016 assessed value together indicated that the Subject was overvalued for fiscal year 2016. The Presiding Commissioner, however, found that the evidence of record, when viewed as a whole, did not support the appellants' assertions.

² The conditions of the sale were not specified and the evidence presented was not sufficient to establish that the sale was an arm's-length transaction or that its sale price reflected the property's fair cash value.

During the latter part of 2015, the assessors inspected the Property and concluded that they had been mistaken in reducing its assessed value for fiscal year 2016. Consequently, after the inspection, the assessors informed the Property's assessed owners that the Property's assessed value would be raised to approximately \$294,000 for fiscal year 2017. The assessors also informed the appellants of their actions and provided the appellants with comparable sales that supported their conclusions.

At the hearing of this appeal, the assessors offered comparable-sales data for four properties located on State Highway in Eastham. Each property was a cottage-style condominium, like the Subject, and the Presiding Commissioner found that the properties were comparable to the Subject. Moreover, the Presiding Commissioner found that, considered collectively, their physical attributes and sale prices supported the Subject's assessed value for fiscal year 2016.

Based on the evidence before him, the Presiding Commissioner found and ruled that the appellants failed to sustain their burden of demonstrating their right to an abatement. The Property's sale could not be confirmed as an arm's-length transaction and its reduced assessment for fiscal year 2016 was a mistake that the assessors

acknowledged and rectified. Further, and of equal or greater import, the assessors submitted credible comparable-sales data that the Presiding Commissioner found supported the contested assessment. In sum, the evidence of record did not support the appellants' assertions and the Presiding Commissioner issued a decision for the appellee in this appeal.

OPINION

Assessors have a statutory obligation to assess real estate at its fair cash value as of the first day of January of the year preceding the fiscal year at issue. G.L. c. 59 §§ 11 and 38. Fair cash value is the price upon which a willing buyer and a willing seller would agree if both are fully informed and neither is under compulsion. *Boston Gas Co. v. Assessors of Boston*, 334 Mass. 549, 566 (1956).

The burden of proof is upon the taxpayer to make out a right to an abatement as a matter of law. *Schlaiker v. Assessors of Great Barrington*, 365 Mass. 243, 245 (1974). The taxpayer may sustain this burden by introducing affirmative evidence of fair cash value, or by proving that the assessors erred in their method of valuation. *General Electric Co. v. Assessors of Lynn*, 393 Mass. 591,

600 (1984). "The introduction of ample and substantial evidence in this regard may provide adequate support for abatement." **Chouinard v. Assessors of Natick**, Mass. ATB Findings of Fact and Reports 1998-299, 307-308 (citing **Garvey v. Assessors of West Newbury**, Mass. ATB Findings of Fact and Reports 1995-129, 135-36; **Swartz v. Assessors of Tisbury**, Mass. ATB Findings of Fact and Reports 1993-271, 279-80). Further, an assessment is presumed to be valid unless the taxpayer is able to sustain his or her burden of proving otherwise. **Schlaiker**, 365 Mass. at 245.

"[S]ales of property usually furnish strong evidence of market value, provided they are arm's-length transactions and thus fairly represent what a buyer has been willing to pay for the property to a willing seller." **Foxboro Associates v. Board of Assessors of Foxborough**, 385 Mass. 679, 682 (1982). Sales of comparable realty in the same geographic area and within a reasonable time of the assessment date generally contain probative evidence for determining the value of the property at issue. **Graham v. Assessors of West Tisbury**, Mass. ATB Findings of Fact and Reports 2007-321, 400 (citing **McCabe v. Chelsea**, 265 Mass. 494, 496 (1929)), *aff'd*, **Graham v. Assessors of West Tisbury**, 73 Mass. App. Ct. 1107 (2008).

On the basis of the evidence presented, the Presiding Commissioner found that the appellants did not provide sufficient affirmative evidence to support their claim that the Subject was overvalued, nor did they prove that the assessors erred in their method of valuation. The appellants focused entirely on a sale of a condominium that was not confirmed as an arm's-length transaction and was undervalued by the assessors for fiscal year 2016. Moreover, the Presiding Commissioner found that comparative-sales evidence presented by the assessors, which related to four properties, supported the assessed value of the Subject for the fiscal year at issue.

The Presiding Commissioner thus found and ruled that the appellants failed to meet their burden of demonstrating that the Subject was overvalued. On this basis, the Presiding Commissioner issued a decision for the appellee in this appeal.

APPELLATE TAX BOARD

By: _____

James D. Rose
James D. Rose, Commissioner

A true copy:

Attest: _____

James Brown
Clerk of the Board

Asst.